ENVIRONMENTAL & ENERGY LAW PROGRAM
HARVARD LAW SCHOOL

Suncor v. Boulder: Preemption, State Law, and Climate-Related Harm

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September 17, 2026

Earlier this year, the Supreme Court agreed to consider *Suncor v. Boulder*, a case in which oil and natural gas companies have asked the Court to rule that state law claims related to damage caused by climate change are unavailable as a matter of law. Briefing is nearly complete, and the Court has scheduled oral argument for October 5, 2026.

Boulder and numerous amici supporting its position have raised a variety of arguments why the companies' theories should fail. In this paper, I discuss some of those arguments and how this case fits into the moving pieces of climate regulation and litigation, including the broader context of the United States' effort to prevent a range of state actions to address climate change.

Background on *Suncor v. Boulder*

The City of Boulder and Boulder County Commissioners (collectively, "Boulder") filed the case in Colorado state court, raising a variety of state tort and consumer protection claims against four oil and natural gas producers.[1] Boulder's complaint seeks damages for harm to its property caused by climate change attributable to greenhouse gas emissions from combustion of these companies' products. Their claims targeting producers are rooted in consumer protection laws, including an allegation that the companies misled the public about the impacts of climate change and the role fossil fuel products have in exacerbating those harms.

Shortly after Boulder filed the case, the defendant companies sought to move the case from state to federal court under the theory that Boulder's claims arose under federal law, not state law. That issue went to the Court of Appeals for the Tenth Circuit, which agreed with the federal district court that Boulder's claims belonged in state court. In 2023, the U.S. Supreme Court denied the defendant companies' request for review, leaving intact the Tenth Circuit's jurisdictional decision in Boulder's favor.[2]

Back in state court, the defendant companies filed a motion to dismiss Boulder's complaint, arguing that Boulder's state-law claims could not proceed because state law could not govern out-of-state conduct and that applying state tort law to the companies' conduct (including selling fuels outside the United States) could impair the federal government's power to decide foreign policy. The state trial court denied defendants' motion to dismiss.

The defendant companies sought review in the Colorado Supreme Court, which held that the case could go forward in the state trial court. That decision is now the subject of the current Supreme

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[1] Amended Complaint, Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc., No. 2018-cv-30349 (Boulder Cnty. Colo. Dist. Ct. filed June 11, 2018), available at https://www.supremecourt.gov/DocketPDF/25/25-170/408812/20260514093935075_Boulder%20joint%20appendix.pdf.

[2] Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, 142 S. Ct. 1795 (2023).

Court case.[3] While other preliminary questions remain in the case, the core question before the Court is about whether Boulder's case can proceed — specifically, "[w]hether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate."[4]

Importantly, the Court may not even reach that question. When it granted certiorari, the Court also asked the parties to brief whether the Court has statutory and Article III jurisdiction to hear the case, an issue Boulder raised in its opposition to the companies' petition for Supreme Court review.[5] Boulder and several amici have argued that the companies lack standing to seek review now because the Colorado Supreme Court's decision does not injure the companies on its own, and that the interlocutory nature of the decision otherwise renders the decision unreviewable at this stage. If the Court agrees, it may dispose of the case without reaching the central question about the availability of Boulder's state law claims.[6] These jurisdictional questions, while potentially dispositive, are outside the scope of this paper.

Basics of preemption and related doctrines

Before exploring the oil companies' arguments and the responses by Boulder and its supporting amici, I provide a short primer on preemption and related constitutional doctrines that prevent the application of state law.

Express statutory preemption

The most straightforward type of preemption occurs when a federal statute explicitly states that it preempts state law. Courts generally do not extend preemption beyond what the statute explicitly provides. Thus, the presence of an express preemption clause in a statute may suggest that Congress did not intend matters not addressed by the clause to be preempted.[7]

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[3] *See* Erika Kranz, *US Urges the Supreme Court to Stop Climate Suits While EPA Questions Authority to Regulate Emissions*, Harvard Env't & Energy Law Program (Oct. 20, 2025), https://eelp.law.harvard.edu/us-urges-the-supreme-court-to-stop-climate-suits-while-epa-questions-authority-to-regulate-emissions/, for a discussion of how the United States' support for the companies' cert petition departs from its usual approach.

[4] *See* Brief for the Petitioners, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed May 14, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/408810/20260514091116673_Boulder%20brief%20for%20petitioners%20FINAL.pdf; Brief for the United States as Amicus Curiae Supporting Petitioners, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed May 21, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/409590/20260521184428959_25-170_Suncor_v_Boulder_Merits_FINAL.pdf.

[5] Order Granting Petition, Suncor Energy (U.S.A.) Inc. v. Boulder County, No. 25-170 (S.Ct. Feb. 23, 2026), https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/25-170.html.

[6] The Court would likely do so by dismissing the petition for certiorari as improvidently granted. *See generally* Stephen Wermiel, *Will the Supreme Court DIG It?* SCOTUSBLOG (Nov. 21, 2025), https://www.scotusblog.com/2025/11/will-the-supreme-court-dig-it/, for background on the practice.

[7] Cipollone v. Liggett, Inc., 505 U.S. 504, 517 (1992).

Implied statutory preemption

Courts find implied preemption even where Congress has not explicitly stated an intent to preempt state law, but where Congress has designed the statute to occupy an entirely regulatory field or where the application of state law would interfere with the goals of the federal statute. Courts typically apply a presumption against preemption, particularly in areas of traditional state concern such as health, safety, and land use regulation.[8] This presumption reflects institutional concerns: it preserves state sovereignty, maintains reliance interests in state law, and respects Congress's primary role in defining the scope of federal legislation.[9]

Courts have found field preemption where Congress has shown an intention to occupy an entire field of regulation. This may occur where Congress has established a regulatory scheme that is "so pervasive as to make reasonable the inference that Congress left no room for States to supplement it" or where "the federal interest" in the regulatory field "is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[10] "Field preemption . . . is disfavored" and applied only where Congress's intent is clear.[11]

Conflict preemption may arise where either it is impossible for regulated parties to comply with both federal and state law (sometimes called "impossibility" preemption)[12] or where "state law . . . stands as an obstacle" to Congress's objectives (sometimes called "obstacle" preemption).[13] Courts applying either subtype require a "significant conflict" rather than mere overlap or potential interference.[14] Obstacle preemption may occur where state law interferes with significant federal goals, such as to adopt a uniform system of regulation or to establish a regulatory ceiling.[15] Courts infrequently turn to obstacle preemption, more often grounding preemption analysis in what Congress has expressly done rather than on divined Congressional intent.[16]

Related doctrines

Several other doctrines that can limit the application of state law also arise in the *Suncor v. Boulder* briefing.

Courts sometimes find an implicit limitation on state authority under the dormant Commerce Clause, which is understood to prevent states from discriminating against or imposing unreasonable burdens

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[8] Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996); U.S. v. Locke, 529 U.S. 89, 108 (2000) (discussing how an "assumption of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant presence" (cleaned up)).

[9] *See Cipollone,* 505 U.S. at 516.

[10] Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[11] *Locke*, 529 U.S. at 108.

[12] *See* Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–43 (1963).

[13] Geier v. Am. Honda Motor Co., 529 U.S. 861, 873 (2000) (internal citation omitted).

[14] Boyle v. United Technologies Corp., 487 U.S. 500, 507 (1988).

[15] Geier, 529 U.S. at 881.

[16] *See, e.g.,* Lorillard Tobacco Co. v. Am. Legacy Found., 533 U.S. 525, 571 n.4 (2001) (recognizing potential grounds for obstacle preemption but relying on field preemption).

on interstate commerce. Laws that facially discriminate against out-of-state commerce are invalid;[17] facially neutral laws may be subjected to a balancing test.[18] The Court has rejected the idea that a state law is invalid simply because it has practical effects on out-of-state conduct.[19]

Occasionally, courts will determine that state law too directly interferes with the federal government's ability to conduct foreign affairs. This can be an application of obstacle preemption (discussed above) if a state law interferes with a federal statute's objectives as to some specific foreign policy.[20] Indeed, foreign affairs preemption usually requires a specific federal action regarding foreign affairs, like a statute or an agreement, rather than generalized federal interests. But in some instances, the Court has held that state law must yield even absent a conflicting federal law if it is "an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress."[21]

Preemption arguments sometimes appeal to the constitutional structure itself, such as how the Constitution allocates power between the federal government and the states or among the states. However, the Supreme Court has held that preemption requires grounding in either constitutional text or federal statute; preemption cannot rest on theories untethered to textual moorings, holding that "[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it."[22]

Defendants' — and the United States' — arguments that claims like Boulder's are barred

In their briefs before the Supreme Court, the oil and natural gas companies[23] and the United States, which filed as an amicus supporting the companies,[24] make similar arguments for why tort claims like Boulder's should be unavailable.[25]

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[17] Dean Milk Co. v. City of Madison, 340 U.S. 349, 354 (1951).

[18] Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

[19] National Pork Producers Council v. Ross, 598 U.S. 356, 374–75 (2023).

[20] *See, e.g.*, Crosby v. Nat'l Foreign Trade Council, 30 U.S. 363 (2000).

[21] Zschernig v. Miller, 389 U.S. 429, 432 (1968) (striking down a state statute that barred inheritance by heirs to certain countries, holding that the statute may disturb foreign relations).

[22] Hencely v. Fluor Corp., 608 U.S. 31, 146 S.Ct. 1086, 1093 (2026) (quoting Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp., 485 U.S. 495, 503 (1988)).

[23] Brief for the Petitioners, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed May 14, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/408810/20260514091116673_Boulder%20brief%20for%20petitioners%20FINAL.pdf ("Petitioners Opening Brief").

[24] Brief for the United States as Amicus Curiae Supporting Petitioners, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed May 21, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/409590/20260521184428959_25-170_Suncor_v_Boulder_Merits_FINAL.pdf ("United States Brief").

[25] Many other entities filed amicus briefs supporting the defendant-petitioners as well. The Court is likely to pay special attention to the United States' brief, and the United States has asked the Court to be included in oral argument — something the Court often grants the federal government but rarely gives other amici. *See* Motion

They portray Boulder's suit not just as an effort to recoup local climate-related costs, but as an attempt to regulate the worldwide conduct of oil and natural gas producers by stretching the reach of state authority well beyond its lawful limits. On their telling, claims like Boulder's could expose companies to massive, open-ended liability and effectively force them to reduce fossil-fuel production; the suit is thus an effort to change global behavior, not merely to recover damages.

Both the companies and the United States rely heavily on arguments that the United States' constitutional structure prevents state law from applying in this kind of case. These arguments have both a horizontal federalism component (that the relationship among states prevents state law from applying in this kind of case) and a vertical federalism component (that the federal government, rather than the states, has a special, preeminent interest in regulating this kind of conduct).

They argue that state law (including common law) generally cannot reach conduct occurring in other states, and that a narrow "effects" exception requires direct, traceable, and particularized in-state harms. They note that the complained-of conduct by fossil fuel producers takes place largely outside Colorado. Further, climate-change impacts, they contend, do not qualify for a narrow exception to the extraterritorial application of state law because greenhouse gas emissions mix globally in the atmosphere and any resulting harms are not unique to Boulder. For that reason, they argue that disputes over interstate and global pollution are inherently matters for federal, not state, law.

They further contend that applying state law to a case about fossil-fuel production and emissions would interfere with the federal government's conduct of foreign affairs, another domain reserved to the national government. State-level climate suits, they argue, risk cutting against U.S. positions in international climate negotiations and creating diplomatic friction.

Finally, they argue that, even apart from these structural limits, the Clean Air Act preempts state efforts to regulate emissions except where the statute expressly preserves state authority. In their view, the Act displaced the prior federal common law of air pollution and leaves no room for state law claims. They argue both that the Act establishes a comprehensive statutory scheme for regulating air quality, thereby preempting that entire field, and that state law claims would conflict with, and be an obstacle to, federal air regulation. Even though Boulder's claims target fossil-fuel producers rather than emitters, they argue that shifting the focus upstream from the directly regulated sources does not change the analysis: Congress made the Environmental Protection Agency (EPA) (together with states in which emitting sources are located) the primary decisionmaker about whether and how to regulate domestic emissions sources, and suits like Boulder's would let other states impose their own conflicting regimes on the same underlying emissions.

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of the United States for Leave to Participate in Oral Argument as *Amicus Curiae* and for Divided Argument (July 28, 2026); Amanda Frost, *"Tenth justice" or "third advocate"?: Examining the solicitor general's frequent participation at oral argument*, SCOTUSBLOG (July 19, 2021), https://www.scotusblog.com/2021/07/tenth-justice-or-third-advocate-examining-the-solicitor-generals-frequent-participation-at-oral-argument/.

The United States' position is particularly interesting given its changing approach to climate tort issues over time, and the tensions its argument presents with its arguments in other contexts that the federal government lacks authority to regulate greenhouse gas emissions. *See* Erika Kranz, *US Urges the Supreme Court to Stop Climate Suits While EPA Questions Authority to Regulate Emissions*, Harvard Env't & Energy Law Program (Oct. 20, 2025), https://eelp.law.harvard.edu/us-urges-the-supreme-court-to-stop-climate-suits-while-epa-questions-authority-to-regulate-emissions/.

Boulder's and supporting amici's arguments in response

Boulder and supporting amici have responded that the Constitution, the Clean Air Act, and relevant precedent do not support the companies' and United States' arguments.[26] Several themes emerge from those briefs:

Preemption fundamentals: presumptions and statutory preemption

The Court should not flip the presumption against preemption

Several amici point out that the companies' approach to determining whether the Clean Air Act preempts state law claims such as Boulder's involves a presumption in favor of preemption, whereas the Court's prior decisions reflect a presumption *against* preemption in most instances.

One amicus scholar who has written on the application of preemption and statutory interpretation principles to federal environmental statutes explains that the companies' theory takes two forms; the first is an argument that Congress must "clearly express its intention to" authorize state tort law claims. The amicus explains that this proposed clear-statement rule would be new, unsupported by Supreme Court precedent, and difficult for courts to administer.[27] As a substantive canon, it is non-neutral: it would "advance values external to a statute" by inserting the companies' preferred constitutional balance of power between federal and state governments into the statutory preemption analysis.[28]

The amicus also argues that the companies' second approach would have the Court say that state law claims are preempted absent affirmative statutory terms that preserve them where "uniquely federal interests" are at play. The amicus points out that just last term the Court made clear that even "uniquely federal interests" do not obviate the need for Congressional intent to preempt.[29] He also questions the idea that the Clean Air Act addresses "uniquely federal interests" at all, given that the Act acknowledges that air pollution and its control is "the primary responsibility of States and local governments."[30]

Amici Members of Congress argue that the approach would also inject uncertainty into the field, explaining that "Against this stable backdrop" of precedent that preserves "state law unless in clear conflict with a federal statute," "Congress can reliably dictate, and citizens can reliably predict, the preemptive scope of federal law."[31] Flipping the presumption would "cut against those reliance and

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[26] Some 29 amici filed brief supporting Boulder. Those cited here are only small subset.

[27] Brief of Professor William W. Buzbee at 5–9, 11–12, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417930/20260803130908864_Suncor%20Buzbee%20Amicus%20Brief.pdf ("Buzbee Brief").

[28] Buzbee Brief at 9 (quoting *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring)).

[29] Buzbee Brief at 14–15 (citing *Hencely*, 608 U.S. 31, 38–42).

[30] Buzbee Brief at 15 (quoting 42 U.S.C. § 7401(a)(3)).

[31] Brief of Senator Sheldon Whitehouse, Representative Pramila Jayapal, and 38 Additional Members of Congress as *Amici Curiae* in Support of Respondents at 24, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-

certainty interests" while also "diminish[ing] Congress's primary role in dictating the scope of its legislation."[32] A scholar's brief makes this point as well, calling it a "clarity tax" that intrudes into Congress's domain.[33]

Boulder's consumer protection claims against producers are not tantamount to regulation of greenhouse gas emissions and are within an area of traditional state authority

Boulder and several amici emphasize that Boulder's tort theories are grounded in deceptive promotion, misrepresentation, and related consumer-protection-type concepts, which are not within the regulatory domain the Clean Air Act occupies. The Act is structured around emissions of air pollutants from defined sources and ambient air quality standards, and it tells EPA and source States when and how to set limits on emissions.

Pollution emitters regulated under the Act are not the target of Boulder's claims (which instead target the producers of fossil fuels), and the conduct regulated under the Act (air emissions) is not the conduct Boulder's claims complain of (marketing those fuels while allegedly misrepresenting or concealing their climate risks). As amici Preemption Scholars put it, even where a federal statute preempts a field (discussed in the next section), "it would still be necessary to define the field" — and Boulder's claims are simply outside any field the Clean Air Act preempts.[34]

To demonstrate this, amici States stress in their amicus brief that the heart of Boulder's claim is not regulatory at all: "Boulder is seeking compensation for harms the Petitioners caused in Boulder; it is not seeking to restrict their emissions or prevent them from engaging in their legitimate business interests."[35] Amici Members of Congress put it another way: "Pollution is inherently harmful, which is why it is regulated by Congress under the Clean Air Act; lying about the harm, or illegally misleading the public, is completely separate conduct from that inflicted by the regulated emissions."[36] As Boulder explains, "Nothing in the Act charges EPA with determining the appropriate level of

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170/417898/20260803122809672_260720a%20AC%20Brief%20for%20efiling.pdf ("Members of Congress Brief").

[32] Members of Congress Brief at 24.

[33] Buzbee Brief at 10.

[34] Brief of Preemption Scholars as *Amici Curiae* in Support of Respondents at 26, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417926/20260803130744622_25-170%20Amicus%20Brief.pdf ("Preemption Scholars Brief"). Put another way, even a broad conception of the reach of the Clean Air Act as to emissions regulation, the "lack of any statutory language addressing deceptive marketing and sales of fossil fuels mandates the conclusion that respondents' claims are not statutorily preempted. . . . Holding otherwise would conjure legislative intent out of thin air." Members of Congress Brief at 11–12.

[35] Brief of Colorado, California, and 17 Other States as Amici Curiae in Support of Respondents at 18, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417894/20260803123613654_2026.08.03%20Suncor%20v.%20County%20Commissioners%2025-170%20Amicus%20Brief%20of%20Colorado%20and%2018%20Other%20States.pdf ("States Brief").

[36] Members of Congress Brief at 23.

deception in marketing fossil fuels."[37] And courts assessing Boulder's claim will not have to wade into territory covered by the Act: unlike a nuisance claim premised on the reasonableness of the emissions themselves (which might present a closer question), no court would have to determine "the appropriate level of greenhouse gas emissions."[38] The companies would not need to reduce operations to avoid liability under Boulder's theory, amici explain; "They need only refrain from misleading the public."[39]

Local Government amici respond to the companies' argument that if a preempted field like regulation of air emissions is "a critical step in the causal chain leading to the plaintiffs' injuries," even claims that target a different actor and different action are also preempted.[40] The local governments identify examples where the Court has rejected just that kind of argument, allowing state law to apply even where it "punishes and deters conduct related to" an area of federal regulation.[41] Further, it does not matter that imposing liability for deceptive marketing or Boulder's sales and production theories might indirectly lead to reduced demand for fossil fuels: Boulder emphasizes that a "wide range of conduct and state law" may address or affect supply and demand for products whose consumption generates emissions, but "The Act surely does not preempt . . . energy-efficiency standards, "subsidies for electric vehicles," or "[g]asoline taxes."[42] And Boulder and several amici point out that the Court has recognized that even a state law that regulates conduct upstream of the target of federal regulation (even with intended impacts on that target of federal regulation) can still be permissible.[43]

Amici explain that consumer protection claims like Boulder's "fall within an area of traditional state authority."[44] And, on the flip side, Boulder explains, "[t]he federal common law has never extended to" fraud or deception.[45] Indeed, amici States emphasize that they are fully capable of adjusting the bounds of tort liability through state legislatures and state courts.[46] A decision that the Clean Air Act

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[37] Brief for Respondents at 47, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed July 27, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/418043/20260803182738077_25-170%20Brief.pdf ("Boulder Brief").

[38] Boulder Brief at 47 (quoting Petitioners Opening Brief at 36). Relatedly, amici Preemption Scholars warn that the difference between Boulder's consumer protection concerns and the interstate nuisance cases the companies rely upon also means those cases "must be approached with care" and not broadly imported into a dissimilar substantive matter. Preemption Scholars Brief at 10.

[39] Boulder Brief at 33; *see also id.* at 47.

[40] Petitioners Opening Brief at 36.

[41] Brief of City and County Governments as Amici Curiae in Support of Respondents at 30, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417995/20260803145436568_2026-08-03%20SubSov%20Amicus%20Brief%204923-9086-1764%20v.1.pdf ("Local Government Brief") (citing, e.g., *Silkwood v. Kerr-McGee Corp*, 464 U.S. 238, 249 (1984)).

[42] Boulder Brief at 48, 50; *see also* Preemption Scholars Brief at 26 (similarly flagging the broadness of the companies' theory and the other types of state and local policies it could cover).

[43] Boulder Brief at 49–50; *see also, e.g.,* Preemption Scholars Brief at 26; Members of Congress Brief at 11.

[44] Members of Congress Brief at 20.

[45] Boulder Brief at 33.

[46] States Brief at 25.

preempts state tort claims like Boulder's would infringe on that area of state authority and also potentially mean that "*any* federal permitting or licensing regime for a national industry" would "immuniz[e] that industry from *all* state tort liability by default, even for deceptive practices or other knowing and willful tortious conduct."[47] As to whether Congress would implicitly create such a liability shield simply by regulating within a field, amici Members of Congress say no: "This is not how Congress legislates."[48]

The Clean Air Act does not preempt Boulder's claims via field preemption

Even setting aside the fundamental aspects of Boulder's claim that differentiate them from regulation of emissions under the Clean Air Act, Boulder and amici explain that the Act does not bar these claims.

Several amici argue that the Clean Air Act does not, as the companies and United States argue, comprehensively occupy the field of emissions regulation for pollutants. Amici States, for example, point out that the Act sets up a cooperative system, giving states an important role in emissions regulation.[49] This "cooperative federalism arrangement," Preemption Scholars explain, "forecloses any . . . finding that Congress has preempted the field of emissions regulation."[50]

Members of Congress also point to two broad saving clauses in the Act that explicitly preserve the "right which any person . . . may have under any statute *or common law* to seek enforcement of any emission standard or limitation *or to seek any other relief*,"[51] and "the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution."[52] Amici Former EPA Officials who served under administrations of both parties explain how these clauses and the cooperative system work, including the broad role for states.[53] By contrast, those amici explain the Act's explicit preemption clauses are narrowly defined and cite Supreme Court precedent that an express preemption clause supports an inference that matters outside that clause are not preempted.[54] These amici explain that the saving and explicit preemption clauses undermine the

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[47] Members of Congress Brief at 20–21; *see also* Brief for Jonathan H. Adler as Amicus Curiae Supporting Respondents and Affirmance at 22–23, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417866/20260803112636434_2026-08-02%20Adler%20Suncor%20Amicus%20Final.pdf ("Adler Brief").

[48] *Id.* at 21.

[49] States Brief at 22–23.

[50] Preemption Scholars Brief at 27.

[51] Members of Congress Brief at 13–14 (quoting and adding emphasis to 42 U.S.C. § 7604(e)).

[52] *Id.* at 14 (quoting 42 U.S.C. § 7416).

[53] Brief of Former EPA Administrators, Officials, and Senior Career Staff, and Environmental Protection Network, as *Amici* Curiae in Support of Respondents at 10–16, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417905/20260803123508007_25-170.Amicus_Brief.Former_EPA_Administrators_et_al..pdf ("Former EPA Officials Brief").

[54] Members of Congress Brief at 6, 15; Former EPA Officials Brief at 26–27 (citing *Cipollone*, 505 U.S. at 517; *Lorillard*, 533 U.S. at 541).

idea that Congress intended to so thoroughly occupy the field of air pollution regulation as to prevent any related state action — instead, they support the opposite conclusion.[55] These express preemption carve-outs also demonstrate that Congress knows how to preempt state law claims; amici members of Congress argue that reading the legislative branch's silence as an intent to preempt would conflict with precedent and undermine its role in setting the bounds of preemption.[56]

Congress's action (or inaction) can be interpreted in other ways as well. As members of Congress point out, some members have introduced bills that would prohibit claims like Boulder's, reflecting a tacit understanding that the Clean Air Act does not currently prevent such claims.[57] And an amicus scholar who has published extensively on the intersection of federalism and environmental law as well as the history of environmental law cites past unsuccessful legislative efforts to broaden regulation of greenhouse gases as evidence that federal authority in this area is not so comprehensive as the companies' argument might suggest.[58]

That amicus also argues that even within the realm of greenhouse gas emissions, the Supreme Court's cases have made clear that although "greenhouse gases are air pollutants when emitted from mobile sources . . . and for some stationary sources," the Court has already concluded that greenhouse gases are not necessarily air pollutants for every part of the Clean Air Act.[59] Indeed, he cites past unsuccessful legislative efforts to broaden regulation of greenhouse gases and notes various air regulation programs EPA administers that do not include greenhouse gases.[60] Accordingly, "the Clean Air Act cannot plausibly be described as authorizing the "comprehensive" regulation of greenhouse gases, let alone of the fossil fuel industry."[61]

Boulder and several amici also point to EPA's recent retreat from its already limited regulation of greenhouse gas emissions as a result of EPA's recent conclusion that greenhouse gas emissions from vehicles are outside its regulatory authority.[62] Indeed, Boulder points out that the United States, in its amicus brief supporting the companies, appears to recognize that EPA's new assertion of limited authority and regulatory reversal undermine its arguments that the Clean Air Act preempts the field of greenhouse gas regulations, as when the United States acknowledges its regulatory retreat, it "fall[s] back on [its] separate constitutional preemption argument."[63] Boulder's and its amici's arguments do not rest on this apparent contradiction within the government's position, but

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[55] Members of Congress Brief at 18.

[56] *Id.* at 1, 18–25.

[57] *Id.* at 12.

[58] Adler Brief at 18.

[59] *Id.* (citing *Massachusetts v. EPA*, 549 U.S. 497, 528-30 (2007); *Utility Air Regulatory Grp. v. EPA* ("*UARG*"), 573 U.S. 302, 316, 319, 331–33 (2014)).

[60] *Id.*

[61] *Id.* at 19

[62] Boulder Brief at 46; Adler Brief at 19 n.3; States Brief at 23 n.4; Local Government Brief at 28 n.5; Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act 91 Fed. Reg. 7686 (Feb. 18, 2026), https://www.govinfo.gov/content/pkg/FR-2026-02-18/pdf/2026-03157.pdf.

[63] Boulder Brief at 46 (citing United States Brief at 34 n.4).

simply identify it as further evidence that even the government does not view its authority under the Act as comprehensive.

Boulder's claims do not impair the purposes or objectives of the Act (even if that were a legitimate basis for preemption)

One consumer advocacy organization amicus explains that implied conflict preemption is most often found where "there is a clear contradiction between state and federal law, such that it is impossible for a person to comply with both or for a judge to apply both."[64] Amici States cite recent Supreme Court precedent confirming that "a significant conflict" is required, more than mere overlap.[65] They argue that no such conflict exists here: companies can comply with EPA regulations while also avoiding liability for tort claims like Boulder's.[66] This is true, as Boulder and its amici emphasize, because of how different Boulder's claims are from EPA's regulatory authority.

While the companies urge that allowing tort claims like Boulder's to proceed would interfere with the Clean Air Act's objectives and with EPA's authority to decide whether and how to regulate greenhouse gases,[67] one amicus explains that "purposes-and-objectives" preemption is "unusual" and infrequently used (with the Court instead more often relying on what Congress has done than on what the Court has divined it intended).[68]

Amici Former EPA Officials explain that these claims do not "pose any obstacle to the Clean Air Act's central purpose of reducing air pollution in furtherance of promoting public health and welfare," nor to the methods of achieving that goal.[69] As discussed above, Boulder's claims target different conduct than is regulated under the Act, and its requested remedies do not seek to limit emissions.[70] And as an amicus scholar points out, "Where Congress was concerned that tort litigation might have untoward effects," it has acted.[71]

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[64] Brief of Amicus Curiae Public Citizen in Support of Respondents at 13, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417933/20260803131321120_Suncor%20PC%20amicus%20brief%20FINAL.pdf ("Public Citizen Brief").

[65] States Brief at 23–24 (quoting *Hencely*, 146 S.Ct. at 1094).

[66] Public Citizen Brief at 14.

[67] Petitioners Opening Brief at 44–45.

[68] Public Citizen Brief at 15–17.

[69] Former EPA Officials Brief at 18.

[70] *See generally* Former EPA Officials Brief at 18–20.

[71] Adler Brief at 22. *See also* Members of Congress Brief at 17 (quoting *Wyeth v. Levine*, 555 U.S. 555, 574 (2009) ("If Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision at some point during the [statute's] 70-year history")).

Preemption-adjacent arguments based on inter-state and state-federal roles and relationships

Preemption cannot be based on constitutional structure alone

Boulder and amici counter the idea that preemption could be based on constitutional structure alone, by emphasizing recent decisions in which the Court rejected theories of preemption untethered to constitutional (or statutory) text. They point out that just this term, the Supreme Court rejected the idea that there could be "federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it,"[72] expanding on an earlier decision cautioning that preemption should not be based on only "some brooding federal interest."[73]

Some amici assert that the companies' arguments about the ability for one state's laws to reach conduct in another are a repackaging of arguments the Supreme Court has rejected. Amici Preemption Scholars, for example, explain that under early Commerce Clause doctrine, the Court saw a clear distinction between the federal government's authority (limited, and extending only from the Commerce Clause), and what the states could regulate (reaching nothing that the federal government *could* under the Commerce Clause). But the Court abandoned this "dual federalism" approach nearly 100 years ago.[74] In its place has arisen both a recognition that the federal government has broad powers to regulate and a relaxation of limits on state power, "generally permitting state regulation so long as states did not *discriminate* against interstate commerce."[75] The Court reinforced that presumption against limiting state power in 2023, cautioning "against judges using the dormant Commerce Clause as 'a roving license for federal courts to decide what activities are appropriate for state and local governments to undertake,'" while also recognizing that "many (maybe most) state laws have the 'practical effect of controlling' extraterritorial behavior."[76] The companies' arguments for "structural preemption," the Preemption Scholars explain, "amount[] to the same" kind of "roving license" the Court rejected.[77]

Expanding on this, Boulder and amici point out that state law regularly applies in contexts where conduct in one state harms another state. Amici States identify a range of recent examples where the "Court has recognized that state claims may impose liability for out-of-state conduct that causes in-state injuries."[78] That the Court has regularly recognized the extraterritorial reach and effect of state law is inconsistent with the companies' argument for "federal preemption by virtue of the structure of the Constitution."[79]

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[72] *Hencely*, 146 S.Ct. 1086, 1093 (2026).

[73] Virginia Uranium, Inc. v. Warren, 587 U.S. 761, 767 (2019).

[74] Preemption Scholars Brief at 4–5.

[75] *Id.* at 5.

[76] *National Pork Producers*, 598 U.S. at 374, 380 (internal citations omitted).

[77] Preemption Scholars Brief at 6.

[78] States Brief at 20.

[79] *Id.* at 20–21.

Amici Preemption Scholars also point out that although the companies cite *Ouellette* for the idea that regulation of interstate pollution is a matter for federal, not state, law,[80] the decision actually confirms that the companies' constitutional structure arguments are wrong.[81] In *Ouellete,* the Court rejected application of the law of an affected state in a nuisance claim related to discharges into a shared body of water from a facility in another state, but the Court left open that the law of the source state could still apply. If interstate pollution were "inherently federal" as a constitutional matter,[82] amici explain, Congress could not have preserved the application of state law via statute, as the Court held in *Ouellette*, as *no* state's law could apply.

Questions of causation and remedies are not questions about whether claims are available as a constitutional matter

Several amici respond to what they see as a mixing of questions not before the Court — about whether Boulder will ultimately be able to prove the merits of its claims or how its damages might be measured — with the preemption question that *is* before the Court. The companies and supporting amici, including the United States, argue that the difficulty tracing harms from climate change to particular defendants and the highly attenuated chain of causation suggest state law cannot apply.[83] The United States, in a version of this argument, argues that state law can only apply to out-of-state harms where effects are "direct, traceable, and particularized."[84] And the companies and their amici cite concerns about massive damages that might result from claims like Boulder's.[85]

But the amici States respond that the fact that Boulder's claims may be difficult to establish has nothing to do with their baseline availability. State tort law, they explain, includes "recognized legal doctrines — including reasonableness, foreseeability, causation, comparative fault, damage caps, and pro rata liability — that may ultimately limit Boulder's entitlement to relief, if any."[86] "State courts are capable of requiring a plaintiff to prove" all required aspects of a tort claim, and the answer to the companies' and their amici's concerns about causation, attribution, and contribution is "to advance arguments that take advantage of these doctrines" in the case.[87] Put succinctly, one amicus scholar acknowledges that "[t]he fact that emissions 'cannot be unmixed and traced' . . . may complicate [Boulder]'s ability to prove their case," but that is a question about the merits of

[80] *See* Petitioners Opening Brief at 26.

[81] Preemption Scholars Brief at 16–17.

[82] *See* Petitioners Opening Brief at 39.

[83] *Id.* at 28.

[84] United States Brief at 22–23.

[85] *See* Petitioners Opening Brief at 2–3, *see also, e.g.*, Brief of House Majority Leader Steve Scalise and 73 Other Members of Congress as *Amici Curiae* in Support of Petitioners at 4, 7–8, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed May 21, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/409600/20260521234424932_Suncor%20v.%20Boulder%20Merits%20Amicus%20Brief.pdf ("The sheer magnitude of the alleged damages would restructure the American energy industry—if not bankrupt it altogether").

[86] States Brief at 13.

[87] *Id.* at 14.

their claim, not whether federal law preempts it.[88] And more generally, amici point out that even before reaching the merits, courts will confront other threshold questions like choice of law.[89]

An amicus organization focused on constitutional law examines the United States' "direct, traceable, and particularized" argument and concludes that the cases cited by the United States support using those inquiries to answer questions about the location of an injury or which state's law applies — not whether *any* state's law can apply.[90] The arguments that the Court requires a kind of "constructive presence" in a state or imposes a pre-merits proximate cause analysis to determine whether state law can apply, they explain, "are products of the government's imagination."[91]

Another amicus, an organization with a mission including advocating for science-based decisionmaking, also urges that the Court not prejudge whether Boulder could show that its alleged harms were caused by the companies they have sued.[92] It explains that scientists are capable of quantifying "the contribution of specific causal factors — including specific categories of emissions, such as those from fossil fuel producers — to observed changes in the climate system."[93] Boulder, it explains, has not yet had opportunity to present factual or expert evidence to support its claims and will need to link the companies' products to Boulder's injuries. [94] But the amicus notes that when the case reaches the merits, this body of work will be available to assist with assessing the merits of Boulder's claims, and is capable of making the kinds of links Boulder would need to make.[95]

No foreign affairs policy with the force of law preempts this kind of claim

Amici respond to the companies' argument that the federal government's interest in and authority over foreign affairs preempts any state policy that might have some bearing on climate change, a subject of international negotiation and agreement. As they have regarding the companies' constitutional structure arguments, the amici argue that the Court's analysis should focus on text, rather than vague federal interests.

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[88] Adler Brief at 2 (recognizing also, at 6, that common law claims about pollution have a long history, and while most such claims "addressed local concerns, where causation . . . [was] easiest to demonstrate . . . there was no bar on pursuing common law claims for environmental harms that originated across state lines").

[89] *See, e.g.*, Members of Congress Brief at 24; Adler Brief at 25

[90] Brief of Constitutional Accountability Center as *Amicus Curiae* in Support of Respondents, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417882/20260803115035198_Suncor%20CAC%20Brief%20-%20FINAL.pdf.

[91] *Id.* at 2

[92] Brief for *Amicus Curiae* Natural Resources Defense Council in Support of Respondents at 2, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417916/20260803125632135_Suncor%20Amicus%208.3%20-%20Final.pdf ("NRDC Brief") (explaining, throughout the brief, the development of attribution science, its recognition by international bodies, and its ability to identify and quantify the contributing causes of climate change).

[93] *Id.*

[94] *Id.* at 23.

[95] *Id.* at 26–27.

Preemption Scholars explain that foreign affairs preemption is ordinarily grounded in "positive law," such as a federal statute that limits state sanctions on a foreign government or an "an executive agreement with another country that state law may undermine."[96] The companies and the United States rely instead on a general federal interest in foreign affairs, rather than any particular agreement or law.[97] The companies, however, do not identify any statute establishing a federal-foreign policy on greenhouse gas emissions.

Amici Members of Congress likewise point out that while the administration may have economic policy goals and a desire to withdraw from international climate negotiations (as it did by withdrawing from the Paris Agreement and failing to attend the recent Conference of the Parties to the UNFCCC), neither are the type of "enforceable federal law" with "sufficiently binding effect" that could preempt state law.[98] They explain that Congress, rather than the executive branch, holds the key to turning many of the administration's "concerns" into "congressionally approved policy."[99]

Practical considerations

Climate-driven harms are significant, and tort claims are a key mechanism for market response

Several amici emphasize the practical stakes of this case.

Drawing on recent national and international assessments, one amicus emphasizes that the harms Boulder alleges are part of a well-documented national pattern of climate-driven damage that is already affecting states and communities.[100] It argues that if Boulder's allegations are proved, its experience "would put it among the many communities already recognized to be experiencing increasingly severe or frequent extreme weather events linked to climate change," underscoring that the case is about concrete, ongoing harms to state and local interests rather than abstract policy disputes.[101] Other amici, including federally recognized tribes and ranchers, emphasize how their communities have experienced harms from climate change.[102]

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[96] Preemption Scholars Brief at 20.

[97] *Id.* at 20–21. The scholars acknowledge a single case in which the Court found federal preemption where a state law "may disturb foreign relations" even in the absence of some federal positive law. That case, they explain, was a "radical departure" and remains "isolated," with the Court in subsequent decisions focusing on positive law. Moreover, the companies' theory of "dormant foreign affairs preemption" is even broader than the Court accepted in that case. *Id.* at 20–23.

[98] Members of Congress Brief at 28.

[99] *Id.* at 28–29.

[100] NRDC Brief at 6–9 (quoting, in part, Fifth National Climate Assessment 1-17 (2023)).

[101] *Id.* at 9

[102] Brief of Makah Indian Tribe, Shoalwater Bay Indian Tribe, and Eleven Other Federally Recognized Tribes; Professor Matthew L.M. Fletcher and Eight Other Federal Indian Law Professors; and Tribal Organizations as *Amici Curiae* in Support of Respondents, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417938/20260803133847775_25-170bsacMakahIndianTribe.pdf; Brief for *Amici Curiae* Colorado Ranchers Kathryn Bedell, Andy Breiter, Mike Calicrate, Jay Fetcher, Kathleen Sullivan Kelley, Deirdre Macnab, and Caleb Valdez in Support of Respondents Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of

The amicus brief by a former California Insurance Commissioner underscores how tort claims help translate these realities into mechanisms to which the market can respond. That amicus explains that climate change "is not just tomorrow's scourge. It is today's reality," with "virtually no place in the country" spared from "worsening extreme weather events and . . . the costs that an altered climate imposes on state and local governments."[103] In financial terms, he notes, insured catastrophe losses are already "unprecedented," and climate-driven damage to homes is destabilizing insurance, mortgage, and housing markets, such that "if unremedied and unchecked, climate-driven property losses will lead to economy-wide financial disaster."[104] He stresses that "[t]ort law and the right to loss recovery are fundamental to the efficient operation of the insurance market" and that preempting state tort law for climate-related injuries would force homeowners, local governments, and their insurers "to rely exclusively on insurance and taxpayer funds to remediate property damage," eliminating a key mechanism for sharing and reallocating the escalating costs of climate change.[105]

Broader context: EPA takes deregulatory steps while the U.S. works to shut down state climate action

The Supreme Court's consideration of this case comes at a complicated time for climate-related federal and state action.

In February 2026, EPA rescinded its Endangerment Finding — EPA's longstanding scientific conclusion upon which EPA's regulation of greenhouse gas emissions rests, as well as all GHG standards for light, medium, and heavy-duty vehicles.[106] EPA stated that it lacks authority under the Clean Air Act to regulate pollutants that do not have immediate and direct local or regional effects, that emissions from new U.S. vehicles are too small to endanger public health or welfare, and that it must rescind the Endangerment Finding because regulating vehicle emissions is costly and futile.[107] As a result, EPA is no longer regulating greenhouse gas emissions from vehicles.

Boulder County, No. 25-170 (S.Ct. filed July 31, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417764/20260731154704243_25-170_Brief%20of%20Amici.pdf.

[103] Brief of *Amicus Curiae* Dave Jones in Support of Respondents at 2, Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, No. 25-170 (S.Ct. filed Aug. 3, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/417966/20260803141046066_25-170%20Amicus%20Brief%20of%20Dave%20Jones.pdf.

[104] *Id.* at 4, 9–17.

[105] *Id.* at 21, 22.

[106] Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act, 91 Fed. Reg. 7686 (Feb. 18, 2026), https://www.govinfo.gov/content/pkg/FR-2026-02-18/pdf/2026-03157.pdf.

[107] *See* Carrie Jenks, Erika Kranz & Sara Dewey, *Eliminating the Foundation: Vulnerabilities in and Implications of EPA's Endangerment Finding Rescission*, Harvard Env't & Energy Law Program (Mar. 2, 2026), https://eelp.law.harvard.edu/eliminating-the-foundation-vulnerabilities-in-and-implications-of-epas-endangerment-finding-rescission/, for deeper analysis.

Several groups, including a coalition of states, have challenged the rescission, and merits briefing in the consolidated challenges in the D.C. Circuit could begin this fall.[108] Given that timing and the October argument set for *Suncor v. Boulder*, it is likely that the Supreme Court will resolve *Suncor v. Boulder* before the D.C. Circuit rules in the Endangerment Finding challenges.

EPA has also retreated from regulating greenhouse gas emissions from a second sector: power plants. In September 2026, EPA issued a final rule rescinding greenhouse gas standards for existing fossil fuel-fired power plants and weakening standards for new plants. It also issued a supplemental proposal to conclude, as it did in the context of vehicle emissions, that it lacks authority to regulate these emissions under the Clean Air Act.[109]

EPA, together with Congress, has also reduced the ability of states to take their own more protective measures. For example, the Clean Air Act contains a provision that allows California to set vehicle emissions standards more stringent than federal standards if EPA grants the state a waiver to do so, and other states may then apply those standards to vehicles sold in their state as well. In February 2025, EPA sent three such waivers to Congress for review under the Congressional Review Act (CRA), despite never previously having deemed the waivers "rules" for purposes of the CRA (and contrary to conclusions of other government entities that they were not). Congress then vetoed the three waivers, two of which focused on zero-emission vehicle requirements, eliminating California's ability to use standards covered by those waivers.[110] Litigation about whether that action was valid is ongoing, and a court on September 2, 2026, preliminarily enjoined EPA from sending another batch of older California waivers addressing greenhouse gas emissions to Congress for CRA consideration as well.[111]

Additionally, the United States has taken a broad approach to preventing several kinds of state action concerning greenhouse gas emissions and climate change harms. The United States has filed lawsuits against two states to prevent them from enforcing their "climate superfund" laws, designed to require responsible parties to share the financial burden of the states' costs of responding to climate change-related harms.[112] The United States also filed suits to prevent states from filing tort

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[108] American Public Health Association v. EPA, No. 26-01037 (D.C. Cir. filed Feb. 18, 2026) (lead case of several consolidated challenges).

[109] EPA, Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants, https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power (last accessed Sept. 15, 2026) (linking pre-publication versions of the partial repeal and supplemental proposal; as of this writing, the rule and proposal have not yet been published in the Federal Register).

[110] For an explanation of how these procedures depart from past uses of the CRA, *see* Sarah Hart-Curran, *The Congressional Review Act in 2025: Expanding Use and Emerging Questions,* Harvard Env't & Energy Law Program (Feb. 5, 2026), https://eelp.law.harvard.edu/the-congressional-review-act-in-2025-expanding-use-and-emerging-questions/.

[111] Complaint, California v. EPA, No. 3:25-cv-04966 (N.D. Cal. filed June 12, 2025) (challenging initial set of waiver vetoes); Memorandum Opinion, California v. EPA, No. 26-cv-2185 (D.D.C. Sept. 2, 2026) (preliminarily enjoining EPA from sending further waiver decisions for review).

[112] United States v. New York, No. 1:25-cv-03656 (S.D.N.Y. filed May 1, 2025); United States v. Vermont, No. 2:25-cv-00463 (D. Vt. filed May 1, 2025).

suits related to climate change damages.[113] And in at least one other case, the United States has filed a "Statement of interest" in a state suit against fossil fuel producers.[114] In each instance, the United States' arguments are a version of those it has made in *Suncor v. Boulder*.

Those arguments have gotten some traction. On August 31, 2026, a federal district court ruled in a case in which states and industry had challenged New York's climate superfund law (and the United States weighed in by filing a statement of interest) that the state law is preempted by the Clean Air Act.[115] The court held that the question of whether the climate superfund law could be enforced was indistinguishable from a 2021 decision from the Court of Appeals for the Second Circuit, which rejected the City of New York's state law nuisance or trespass claims against oil companies because any such claims would have been governed only by federal common law that had been displaced by the Clean Air Act, with no role for state law.[116] In reaching its conclusion, the district court considered and rejected some arguments similar to those presented by Boulder and its amici, tracking close to the circuit precedent that it determined was binding.

Given the legal theories being asserted in other cases and rulemakings, several amici supporting Boulder before the Supreme Court note that there is tension between: (1) the United States' assertions of broad EPA authority in the context of *Suncor v. Boulder* and other cases in which it argues state laws or suits touching on climate change are preempted and (2) EPA's assertion that it has limited authority to act to reduce greenhouse gas emissions from vehicles. The United States' amicus filing in *Suncor v. Boulder* gives little treatment to this tension, but it will be important to watch whether Justice raises these questions at oral argument.

This tension may partially explain the United States' decision to center its arguments based on constitutional structure, rather than those based on the Clean Air Act. If those constitutional arguments prevail, they could affect states' efforts to reduce greenhouse gas emissions or to obtain financial assistance for the costs of climate change damage.

If Boulder prevails on the preemption question (or the Supreme Court dismisses the petition for certiorari) the case will go back to Colorado state court, where that court will likely consider more threshold questions before it begins to approach the merits of Boulder's claims.

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113 United States v. Minnesota, No. 0:26-cv-02456 (D. Minn. filed May 04, 2026); Order Granting Defendants' Motion for Judgment on the Pleadings, United States v. Hawaii, No. 1:25-cv-00179 (D. Haw. Apr. 15, 2026) (later altered to dismiss without prejudice).

114 Michigan v. BP P.L.C., No. 1:26-cv-00254 (W.D. Mich. filed Jan. 23, 2026).

115 Memorandum-Decision and Order, West Virginia v. James, No. 1:25-cv-00169 (N.D.N.Y. Aug. 31, 2026), https://www.uschamber.com/assets/documents/Opinion-Chamber-v.-James-N.D.N.Y.pdf.

116 City of New York v. Chevron Corp., 993 F.3d 81 (2d Cir. 2021).